IN THE HIGH COURT OF BOMBAY AT GOA

FIRST APPEAL NO.23/2000 WITH
MISCELLANEOUS CIVIL APPLICATION NO. 291/2005

Pandhari Kusta Bhagat,
Son of Kusta Bhagat, major in age,
R/o. H.No.580, Bhagatwada,
Nagarcem, Cancacona, Goa. ..... Appellant/
Applicant.

V/s.

1. Special Land Acquisition Officer,
South Goa, K.R.C.L.,
Amey Guest House, Davorlim Road,
P.O. Navelim, Salcete, Goa.

2. The Chief Engineer,
K.R.C.L., 4th Floor, Souza Towers,
Church Square, Panaji-Goa ..... Respondents.

Mr. P.A. Kamat, Advocate for the appellant.

Mr. E. Afonso, Advocate for the respondents.

CORAM : R.M. LODHA, J.

DATE : 23RD SEPTEMBER, 2005.

ORAL JUDGMENT

This appeal is directed against the Judgment and Award dated 31st July, 1999 passed by the Additional District Judge, South Goa, Margao (Reference Court) in Land Acquisition Case No. 157/1995.

2. A large tract of land was acquired for the purposes of new broad gauge line for Konkan Railway pursuant to the Notification dated 11.6.1991 that was published on 24.7.1991 in the newspapers; though in the Official Gazette it was published on 27.6.1991. This appeal concerns the acquisition of land admeasuring 2200 sq. metres under Survey No. 190/14 of Village Nagorcem-Palolem. Along with the aforesaid land, the other land out of various survey numbers situate at Village Nagorcem-Palolem was acquired pursuant to the notification afore-referred. For the compulsory acquisition of the aforesaid land admeasuring 2200 sq. metres, the Special Land Acquisition Officer awarded compensation at the rate of Rs.9/- per sq. metre. The appellant aggrieved by the inadequate compensation awarded by the Special Land Acquisition Officer sought reference and the matter was referred to the District Judge, South Goa, Margao. The appellant claimed compensation at the rate of Rs.120/- per sq. metre. Before the Reference Court, the appellant produced a sale deed concerning a plot of land admeasuring 1500 sq. metres dated 13.1.1988. The owner of the said plot was examined by the appellant as AW.1 and the sale deed was exhibited as AW.1/A. The appellant also examined his power of attorney Pradeep Bhagat as AW.2. The Award in Land Acquisition Case No.90/1993 was also produced by the appellant as Exhibit AW.2/D. The respondents examined Espirito

Furtado, the Civil Engineer as RW.1. The Reference Court held that the sale deed Exhibit AW.1/A cannot be taken as basis for determination of the market value of the acquired land. The Award given in Land Acquisition Case No.90/93 was not relied upon as the appeal was pending before this Court. The Reference Court, thus, found that the evidence led by the appellant was not acceptable for enhancement. Consequently, the Reference Court by Judgment and Award dated 31.7.1999 rejected the reference. Aggrieved thereby, the present appeal has been preferred.

3. The appellant has made Miscellaneous Civil Application No.291/2005 for production of additional evidence whereby the appellant sought to produce three sale deeds dated 19.1.1987, 18.4.1990 and 7.6.1990 respectively. By means of this miscellaneous civil application, the appellant also seeks to produce the Judgment and Award dated 26.4.1999 in Land Acquisition Case No. 153/95, the Judgment and Award dated 8.7.1999 in Land Acquisition Case No.147/95 and the Judgment and Award dated 30.7.1999 in Land Acquisition Case No. 139/95. The additional evidence in the nature of the Awards passed by the Reference Court is in respect of the land acquired under the same notification and similarly situated close-by lands. By order dated

15.4.2005, the Miscellaneous Civil Application was ordered to be taken up along with the appeal.

4. The learned Counsel for the respondents did not dispute that the three Judgments and Awards that are sought to be produced by way of additional evidence relate to the award of compensation in respect of the lands that were acquired under the same notification and similarly situated lands. The learned Counsel for the respondents, thus, did not have any objection to the consideration of the three Judgments and Awards dated 26.4.1999, 8.7.1999 and 30.7.1999 in Land Acquisition Case Nos. 153/99, 147/95 and 139/95 respectively by way of the additional evidence. He did not express any desire to produce any evidence in rebuttal to the additional evidence.

5. The Judgments and Awards afore-referred are, therefore, taken on record and treated as part of evidence.

6. The additional evidence taken on record is relevant and rather clinching for the decision of the appeal.

7. Adverting to the Award dated 26.4.99 in Land Acquisition Case No.153/95, I find that the said case related to acquisition of 746 sq. metres of land. That land is from Survey No.195/1 of Nagarcem-Palolem Village. The said land was acquired pursuant to the notification under Section 4 of the Land Acquisition Act published on 27.6.1991. That was a case where like the case in hand the Special Land Acquisition Officer awarded compensation at the rate of Rs.9/- per sq. metre and the claimant sought enhancement from the Reference Court. Without any doubt, the acquisition of the subject-land and the acquisition of the land in Land Acquisition Case No.153/95 was under the same notification and for the same public purpose and situated in the same village. There is no dis-similarity between the subject-land and the land that was subject-matter of consideration in Land Acquisition Case No.153/95. As a matter of fact, the learned Counsel for the respondents did not dispute this position. However, the learned Counsel for the respondents submitted that though in Land Acquisition Case No.153/95 the reference Court awarded the compensation at the rate of Rs.42/- per sq. metre and that the appeal preferred by the respondents has been dismissed by the learned Single Judge of this Court, yet in large number of similarly situated lands this Court has awarded compensation at the rate of Rs.19/- per sq. metre. The learned Counsel for the appellant conceded

that in large number of first appeals relating to the similarly situated lands under the same notification for the same public purpose this Court has awarded compensation at the rate of Rs.19/- per sq. metre. In this view of the matter, the learned Counsel for the appellant submitted that the appellant restricts the enhancement of compensation at the rate of Rs.19/- per sq. metre as awarded by this Court in First Appeals No. 62/2000, 3/2000, 8/2002, 258/2000, 175/2002, 123/1999, 22/2001, 122/1999, 148/2000, 149/2000, 154/2000, 143/2000, 11/2000, 28/2000, 142/2000, 152/2000, 12/2000, 91/2001, 94/2002, 20/2002, 117/2001, 30/2002 and 5/2000. The appeal, therefore, does not require elaborate discussion and in view of the agreed position between the Counsel for the parties that for the similarly situated lands under the same notification this Court having awarded the compensation at the rate of Rs.19/- per sq. metre, the appellant may also be awarded compensation at the same rate.

8. Consequently, the first appeal is allowed in part. The Judgment and the Award passed by the Additional District Judge, South Goa, Margao on 31.7.1999 is set aside. The market value of the acquired land is fixed at Rs.19/- (Rupees nineteen per sq. metre). The appellant shall be entitled to :

(i) a sum of 30 % on the aforesaid market value by way of solatium;

(ii) an amount at the rate of 12 % per annum on the above market value for the period commencing on and from the date of publication of the Notification under Section 4(1) of the Land Acquisition Act 1894 in respect of the subject land to the date of the Award of the Collector or the date of taking possession of the land, whichever is earlier;

(iii) interest on the excess awarded by this Court at the rate of 9 % per annum from the date on which possession of the acquired land was taken till the date of payment of such excess amount for the period of one year;

(iv) interest at the rate of 15 % per annum from the date of expiry of the said period of one year on the amount of such excess award.

No costs. The First Appeal as well as the Miscellaneous Civil Application stand disposed of in the terms aforesaid.

R.M. LODHA, J.

ssm.